

Message Text

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SCA - MISS WATSON

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FM SECSTATE WASHDC

TO AMEMBASSY LONDON PRIORITY

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E.O. 11652: N/A

TAGS:PFOR, UK

SUBJECT:EXTRADITION

REF: HERFURT - WATSON TELECONS

1. SITUATION AS DEPARTMENT SEES IT WITH RESPECT TO REPRESENTATION BY LEGAL OFFICERS OF HOST GOVERNMENT IN EXTRADITION PROCEEDINGS IS THAT TREATY NOW IN EFFECT DOES NOT REQUIRE SUCH REPRESENTATION BUT EACH GOVERNMENT HAS INFORMALLY AGREED TO PROVIDE IT ON BASIS OF RECIPROCITY. UK UNDERTAKING APPLIES TO BOTH FEDERAL AND STATE REQUESTS. US JUSTICE DEPARTMENT, WHICH INFORMED ON PROGRESS OF ALL US REQUESTS, IS ABLE TO JUDGE FOR ITSELF WHETHER TO SEEK PRIVATE COUNSEL BUT PREFERS TO USE DPPSTATE AUTHORITIES DO NOT HAVE THIS BACKGROUND, SO WE HAVE TO ADVISE THEM THAT THEY HAVE A CHOICE. BASED UPON OUR EXPERIENCE IN SUCH CASES AS RATNOFF AND CAIRNS, WE WOULD ADVISE STATE AUTHORITIES THAT PRIVATE COUNSEL MAY BE PREFERABLE IN COMPLICATED AND IMPORTANT CASES BUT LEAVE IT UP TO THEM.

2. IN MOST RECENT UK CASE, STATE AUTHORITIES URGENTLY REQUESTED PROVISIONAL ARREST BECAUSE FUGITIVE ABOUT TO BE RELEASED FROM HOSPITAL AND HAD REPUTATION FOR RAPID MOVEMENT. REQUEST HAD TO BE PASSED TO UK AUTHORITIES WITHOUT WAITING FOR STATE TO DECIDE ON PRIVATE COUNSEL QUESTION AND NEGOTIATE RETENTION SHOULD THEY DO SO. THIS RESULTED IN MAKING

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PROVISIONAL ARREST REQUEST THROUGH DPP AS KNOWN AND FASTEST

MEANS. AT THAT TIME WE DID NOT KNOW HOW STATE PLANNED TO PROCEED AND WE CERTAINLY DID NOT REGARD PROCEEDING WITH PROVISIONAL ARREST AS PRECLUDING STATE AUTHORITIES THEREAFTER FROM PROCEEDING THROUGH PRIVATE COUNSEL. WE PERHAPS SHOULD HAVE ANTICIPATED DPP REACTION BUT JUST ASSUMED THAT IF STATE DECIDED TO GO PRIVATE DPP WOULD BE GLAD TO GET RID OF A CASE.

3. EMBASSY SHOULD DRAW ON ABOVE TO EXPLAIN TO DPP AND HOME OFFICE. EMBASSY MAY ALSO NOTE THAT OUR STATE AUTHORITIES HAVE CONSIDERABLE FREEDOM OF ACTION, ALTHOUGH ALL EVIDENCE MUST PASS THROUGH DIPLOMATIC CHANNELS, AND THAT WHEN WE TELL STATE AUTHORITIES PRIVATE COUNSEL MAY BE PREFERABLE WE ALSO HAVE IN MIND THAT THEIR OWN PRIVATE COUNSEL MAY BE MORE SUCCESSFUL IN GETTING THEM TO PRODUCE SUPPLEMENTARY EVIDENCE ON TIME THAN WE HAVE BEEN ON DPP'S BEHALF. EMBASSY FINALLY MAY POINT OUT THAT FOR OUR PART WE WILL CONTINUE TO REPRESENT UK IN ALL CASES HERE THROUGH JUSTICE DEPARTMENT AND APPROPRIATE UNITED STATES ATTORNEY SO LONG AS UK WISHES AND IS PREPARED TO RECIPROCATATE. THIS DESPITE SOME DISSATISFACTION AT RESULTS IN SOME CASES.

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